IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2910 OF 2002

IN

SUIT NO. 1519 OF 1982

Western India Dyestuffs Corpn. .. Plaintiff

versus

Messrs.Contship Deutschaland GMBH & anr. Defendants

...

Mr. V.N.Kantawala i/b Kantawala for Plaintiff

Mr. Rahul Narichania i/b Motiwala & Co for Defendant no.2

CORAM : D.G. KARNIK, J

DATED : 20th January 2005.

P.C:-

1. This motion is taken out by the defendant no.2 praying for rejection of the plaint against the defendant no. 2 under order 7 Rule 11 of the Code of Civil Procedure. Learned counsel for the defendant relies upon a judgment of this court in M.V.Sea Success vs Liverpool London Steamship Protection and

Indemnity Association Ltd reported in AIR 2002 BOMBAY 151 and in particular observations made in para 57 thereof in support of the contentions that the plaint can be rejected against one or more of the many defendants.

2. Learned counsel for the applicant-defendant no.2 submits that the allegations in the plaint are that the defendant no.2 is a share broker and was acting as an agent as a disclosed principal viz defendant no.1. Under section 230 of the Contract Act, the defendant no.2 was not personally liable and liability, if any, for a breach of the contract must be that of the defendant no.1 alone. Therefore suit against the defendant no.2 is not maintainable and is liable to be dismissed.

3. In my view, there is a distinction between the suit being liable to be dismissed against a party and the plaint being rejected against a party on the ground that it does not disclose a cause of action. In para 5 of the plaint, the plaintiff has specifically pleaded that the acts of coercion and/or pressurisation committed by the defendant no.2 and the manner in which the defendant no.2 forced the

plaintiff to return the original bill of lading and substitution thereof by another bill of lading. In view of the specific allegations made against the defendant no.2 of the wrongful acts done by the defendant no.2, the defendant no.2 is a party to the suit. It cannot be said that the defendant no.2 has been joined as a party to the suit merely as an agent. Whether the defendant no.2 would be liable on the basis of such averments or not is a question of fact which would be required to be decided at trial. It cannot be said that the plaint does not disclose any cause of action against the defendant no.2. Whether defendant no.2 is liable or not would have to be adjudicated on appreciation of evidence which would be adduced at the trial.

4. At the preliminary stage, it cannot be said that the defendant no.2 has been wrongly joined as a party seand therefore his name is liable to be struck of under Order 1 Rule 10 of the Code of Civil Procedure or that the plaint is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. Hence, motion is dismissed.

D.G.KARNIK, J